

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0266P

Sales/Use Tax

For the Period: 2001-2003

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-5-1; 45 IAC 15-11-2

The taxpayer protests the assessment of a penalty.

STATEMENT OF FACTS

The taxpayer is a grouping of doctors that formed a partnership for various purposes.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty assessment be abated. The taxpayer states,

[Taxpayer] is a relatively new organization which has experienced personnel turnover throughout the entire accounting/finance department and changes of persons in the position of Chief Executive Officer and Chief Operations Officer within the last 2 years. Persons responsible for the non-compliance are no longer with our organization. The new staff is dedicated to compliance issues and the company is currently filing all sales tax returns on a timely basis.

And further:

The ambiguity of law regarding use-tax on medical supplies and [Taxpayer's] complex organizational structure of 50+ physicians in 30+ autonomous medical practices further impaired compliance in years prior to our recent audit.

45 IAC 15-11-2(b) states:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) is also of import, and states that the Department “shall waive the negligence penalty ... if the taxpayer affirmatively establishes that the failure ... was due to reasonable cause and not due to negligence.” 45 IAC 15-11-2(c) notes:

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty....

Finally, under IC 6-8.1-5-1 the burden of proof is on the taxpayer and the Department’s proposed assessment is considered as *prima facie* valid.

The taxpayer offers no real arguments or evidence. Regarding the “turnover” of staff, the taxpayer is responsible for its staffing issues. The taxpayer is also responsible for its “complex organizational structure.” The taxpayer, in a conclusory manner, states the law “regarding use-tax on medical supplies” is ambiguous, but does not show this nor does the taxpayer develop this argument. Therefore, for the above reasons, the taxpayer has not met its burden and has not established “reasonable cause.” The penalty protest is denied.

FINDING

The taxpayer’s penalty protest is denied.

DP/JM-051512